



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2019-0573, FRL-10009-43-Region 10]

#### **Air Plan Approval; WA; Infrastructure Requirements for the 2010 Sulfur Dioxide and 2015 Ozone Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Whenever a new or revised National Ambient Air Quality Standard (NAAQS) is promulgated, the Clean Air Act (CAA) requires states to submit a plan for the implementation, maintenance, and enforcement of the standard, commonly referred to as infrastructure requirements. The Environmental Protection Agency (EPA) is proposing to approve Washington State Implementation Plan (SIP) submissions as meeting specific infrastructure requirements for the 2010 sulfur dioxide (SO<sub>2</sub>) and 2015 ozone NAAQS.

**DATES:** Comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2019-0573 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose

disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt, EPA Region 10, 1200 Sixth Avenue – Suite 155, Seattle, WA 98101, at (206) 553-0256, or [hunt.jeff@epa.gov](mailto:hunt.jeff@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, it is intended to refer to the EPA. This supplementary information section is arranged as follows:

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## **I. Background**

On June 2, 2010, the EPA promulgated a revised primary SO<sub>2</sub> NAAQS at 75 parts per billion, based on a three-year average of the annual 99<sup>th</sup> percentile of one-hour daily maximum concentrations (75 FR 35520). In 2015, the EPA promulgated a revision to the ozone NAAQS retaining the existing form of the standard (three-year average of the annual fourth-highest daily

maximum 8-hour average concentration) but lowered the level of both the primary and secondary standards from 0.075 to 0.070 parts per million (80 FR 65292, October 26, 2015). On September 30, 2019, and as supplemented on April 3, 2020, the Washington Department of Ecology (Ecology) submitted SIP revisions to meet certain 2010 SO<sub>2</sub> and 2015 ozone NAAQS infrastructure requirements. We note that Ecology previously submitted a SIP revision on February 7, 2018, addressing CAA section 110(a)(2)(D)(i)(I) (interstate transport prongs 1 and 2) for the 2010 SO<sub>2</sub> and 2015 ozone NAAQS. We approved the February 7, 2018, SIP revision as meeting the CAA section 110(a)(2)(D)(i)(I) requirements for the 2015 ozone NAAQS on September 20, 2018 (83 FR 47568). We will address the CAA section 110(a)(2)(D)(i)(I) requirements for the 2010 SO<sub>2</sub> NAAQS in a separate action.

## **II. Infrastructure Elements**

CAA section 110(a)(1) provides the procedure and timing for SIP submissions after a new or revised NAAQS is promulgated. CAA section 110(a)(2) lists specific elements that states must meet related to a newly established or revised NAAQS. The EPA has issued guidance to help states address these requirements, most recently on September 13, 2013 (2013 Guidance).<sup>1</sup> The requirements, with their corresponding CAA subsection, are listed below:

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.

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<sup>1</sup> Stephen D. Page, Director, Office of Air Quality Planning and Standards. “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Section 110(a)(1) and 110(a)(2).” Memorandum to EPA Air Division Directors, Regions 1 through 10, September 13, 2013.

- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency episodes.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and applicable requirements of part D.
- 110(a)(2)(J): Consultation with government officials; public notification; and Prevention of Significant Deterioration and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

The EPA's 2013 Guidance restated our interpretation that two elements are not governed by the three-year submission deadline in CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are due on separate schedules, pursuant to CAA section 172 and the various pollutant-specific subparts 2 through 5 of part D. These are submissions required by: (i) CAA section 110(a)(2)(C), to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) CAA section 110(a)(2)(I). As a result, this action does not address CAA section 110(a)(2)(C) with respect to nonattainment new source review (NSR) or CAA section 110(a)(2)(I). The EPA has also determined that the CAA section 110(a)(2)(J) provision on visibility is not triggered by a new NAAQS because the visibility requirements in part C, title I of the CAA are not changed by a new NAAQS.

Ecology's September 30, 2019 infrastructure SIP revision noted that it did not contain a narrative for CAA section 110(a)(2)(K) explaining that additional rulemaking was necessary to update Washington's adoption by reference of 40 CFR part 51, appendix W for air quality modeling. On April 3, 2020, Ecology submitted a SIP revision updating the narrative for CAA section 110(a)(2)(K) to reflect the EPA's approval of revisions to Chapters 173-400 and 463-78 Washington Administrative Code (WAC) with an updated adoption by reference of Federal regulations as of January 24, 2018, including the EPA's most recent update to 40 CFR part 51, appendix W. *See* 85 FR 4233 (January 24, 2020) and 85 FR 10301 (February 24, 2020). Also, as part of the September 2019 infrastructure SIP revision, Ecology's CAA section 110(a)(2)(A) narrative included a cross reference to additional SIP-strengthening regulations included as an appendix for EPA approval.<sup>2</sup> Ecology's April 3, 2020 SIP revision updated the narrative to clarify that the current Federally-approved Washington SIP meets all CAA section 110(a)(2)(A) requirements and is not contingent on the EPA's approval of the SIP-strengthening rules. The EPA agrees that the SIP-strengthening rules are severable from the infrastructure certification and can be addressed in a separate future action.

With respect to CAA section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J), Ecology's September 2019 infrastructure SIP revision describes how Washington relies on a narrow set of Federal Implementation Plans (FIPs) in implementing portions of the Prevention of Significant Deterioration (PSD) and regional haze programs.<sup>3</sup> Ecology's infrastructure SIP revision also

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<sup>2</sup> See "state submittal\_173-423 WA Register" and "state submittal\_2010 SO2 and 2015 O3 Appendix B Table" in the docket for this action.

<sup>3</sup> See 40 CFR 52.2497, 40 CFR 52.2500, 40 CFR 52.2501, and 40 CFR 52.2502. Ecology's April 3, 2020

notes that Washington is not submitting replacements for these FIPs at this time. The EPA's 2013 Guidance states, "In this situation, the EPA would make a completeness finding that extends only to the SIP elements actually submitted by the air agency, and a finding that other relevant applicable elements were not submitted. The EPA would be required to take action only on the elements that were submitted, within 12 months after those elements have been determined to be complete. The overall infrastructure SIP would not be approvable with respect to the elements that were not submitted, and thus the EPA could only partially approve the overall infrastructure SIP."

In accordance with the 2013 Guidance, we found that Ecology's September 2019 infrastructure SIP submission was incomplete for the portions addressing the infrastructure elements in CAA section 110(a)(2)(C), (D)(i)(II) (prong 3), (D)(ii), and (J) relating to PSD, because Washington has not fully addressed all requirements of part C of title I of the CAA. We also found the submission incomplete as to element D(i)(II) (prong 4) relating to interstate visibility transport. On November 18, 2019, the EPA sent a letter to Ecology notifying Washington of this determination.<sup>4</sup> With respect to PSD, as a result of this incompleteness finding, the EPA is not taking action on the portions of section 110(a)(2)(C), D(i)(II), (D)(ii), and (J) related to the PSD FIP. The EPA recognizes, however, that Washington has elected to comply with the Federal requirements through joint EPA and state implementation through a FIP. Because Washington is already subject to a FIP, Washington would not have to take further

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SIP revision updated the narrative for CAA section 110(a)(2)(A) and (K) only, with no revisions for other infrastructure elements.

<sup>4</sup> See "completeness letter\_Taylor, Kathy, WA Department of Ecology\_11.18.19" included in the docket for this action.

action for continued implementation of the PSD program.

With respect to prong 4 requirements related to interstate visibility transport under section 110(a)(2)(D)(i)(II), Washington does not have a fully approved regional haze SIP typically used to satisfy element D(i)(II) (prong 4) relating to interstate visibility transport.<sup>5</sup> However, regional haze FIPs are in place to fully address the disapproved portions of the state's SIP for the period of the first long-term strategy for regional haze. *See* 79 FR 33438 (June 11, 2014). As a result, and as explained in more detail in the technical support document (TSD) in the docket for this action, the EPA finds that the FIP obligations with respect to prong 4 for the 2010 SO<sub>2</sub> and 2015 ozone NAAQS are already satisfied, and no further action is required.

The EPA does not anticipate any adverse consequences to Washington as a result of this incompleteness finding for the PSD portions of CAA section 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J), or the interstate visibility transport portion of section 110(a)(D)(i)(II). Mandatory sanctions would not apply to Washington under CAA section 179 because PSD and regional haze SIP submissions are not required under title I part D of the CAA, and in this instance are not in response to a SIP call under section 110(k)(5) of the CAA.

### **III. The EPA Approach to Review of Infrastructure SIP Submissions**

Due to ambiguity in some of the language of CAA section 110(a)(2), the EPA believes that it is appropriate to interpret these provisions in the specific context of taking action on infrastructure SIP submissions. The EPA has previously provided comprehensive guidance on the application of these provisions in the 2013 Guidance and through regional actions on

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<sup>5</sup> See 2013 Guidance, page 33.

infrastructure submissions.<sup>6</sup> Unless otherwise noted below, we are following that existing approach in taking action on these submissions. In addition, in the context of taking action on such infrastructure submissions, the EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.<sup>7</sup> The EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

#### **IV. The EPA Evaluation**

The EPA's evaluation and rationale for proposing action on Washington's September 30, 2019 and April 3, 2020 infrastructure SIP revisions are detailed in the "Technical Support Document for the EPA's Proposed Rulemaking for the Washington Implementation Plan Revision for Meeting the Infrastructure Requirements in the Clean Air Act" (TSD). The TSD is available in the docket for this action.

#### **V. Proposed Action**

We are proposing to approve the September 2019 and April 2020 Washington infrastructure SIP revisions as meeting certain infrastructure requirements for the 2010 SO<sub>2</sub> and 2015 ozone NAAQS, specifically CAA section 110(a)(2)(A), (B), (C) (except for those provisions covered by the PSD FIP), (D)(i)(II) (except for those provisions covered by the PSD

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<sup>6</sup> The EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance) available in the docket for this action and at <https://www.epa.gov/air-quality-implementation-plans/infrastructure-sip-requirements-and-guidance>).

<sup>7</sup> See U.S. Court of Appeals for the Ninth Circuit decision in *Montana Environmental Information Center v. EPA*, No. 16-71933 (August 30, 2018).



and regional haze FIPs), (D)(ii) (except for those provisions covered by the PSD FIP), (E), (F), (G), (H), (J) (except for those provisions covered by the PSD FIP), (K), (L), and (M).

## **VI. Statutory and Executive Orders Review**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law. Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the

1873 Survey Area. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated July 15, 2019.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: May 14, 2020.

Christopher Hladick,  
Regional Administrator,  
Region 10.

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